



NORTH CAROLINA HOME BUILDERS ASSOCIATION

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25 February 2014

Representative Mike Hager
Representative Ruth Samuelson
Senator Brent Jackson
Chairs, Environmental Review Commission
300 North Salisbury Street
Raleigh, NC 27603

Dear Representatives Hager and Samuelson and Senator Jackson,

On behalf of the North Carolina Home Builders Association, I appreciate the opportunity to address our concerns regarding local government ordinances that exceed state and federal mandates and appreciate that the Environmental Review Commission is studying whether and the extent to which this practice should be allowed.

The House passed provisions in 2013 dealing with local preemption in SB 112, Sixth Edition, Section 13.1 and 13.2. These provisions clarified that a local ordinance is not consistent with State or federal law when it regulates a field that is also regulated by a State or federal statute enforced by an environmental agency and the ordinance is more stringent than the State or federal statute and/or the ordinance regulates a field that is also regulated by a rule adopted by an environmental agency and the ordinance is more stringent than that rule.

Recognizing that some existing local regulations do not meet the criteria listed above because there is no corresponding state or federal mandate, the House-passed provisions in SB 112 would allow local governments to adopt an ordinance which is "more stringent" than State or federal statute or rule if the local government satisfied all of the following requirements:

1. The ordinance addresses a unique geographic, meteorological, or environmental condition that the city can demonstrate by substantial evidence is not adequately met by the less stringent State or federal statute or rule.
2. The city adopted the ordinance by a three-fourths vote of the council members present and voting.
3. Before the ordinance becomes effective, the city demonstrates to the satisfaction of the environmental agency that regulates the subject of the ordinance that a more stringent requirement is necessary and in the best interest of the public health or safety. The ordinance shall not become effective unless the environmental agency approves it within 60 days of receipt from the city.

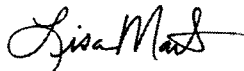
We believe that the Environmental Review Commission should recommend that the General Assembly adopt the language in Section 13.1 and 13.2 of SB 112 in the 2014 session. In addition, NCHBA believes that local preemption legislation should also include a definition of

the term "more stringent". The definition could be in the form of a dollar figure (e.g. a local ordinance is more stringent when it results in an additional cost to the regulated party, beyond the state or federal regulation cost, of X dollars).

In order to provide relief from excessive regulations that currently exist at the local level, the 2014 legislation should require an affirmative duty for local governments to repeal any existing ordinances that are "more stringent" than state or federal requirements. Local governments could pursue readoption of the "more stringent" provisions using the criteria (above) adopted by the House in SB 112. Finally, DENR must discontinue the practice of forcing local governments to regulate beyond what is mandated by federal and state laws in implementing permit conditions which exceed the corresponding federal and/or state mandates. DENR should revise all rules to require that local governments "meet" standards, not "meet or exceed" standards.

Again, thank you for considering the very important issue of local government ordinances that exceed state and federal mandates. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,



Lisa Martin
Director of Government Affairs

CC
Representative Chuck McGrady
Senator Andrew Brock
Representative Tim Moffitt
Jeff Hudson
Towers Mingledorff